

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION

Call to Order: By **VICE CHAIRMAN RON ERICKSON**, on January 26, 2001 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Rep. Ron Erickson, Vice Chairman (D)
Rep. Roger Somerville, Vice Chairman (R)
Rep. Joan Andersen (R)
Rep. Keith Bales (R)
Rep. Joe Balyeat (R)
Rep. Gary Branae (D)
Rep. Eileen Carney (D)
Rep. Larry Cyr (D)
Rep. Rick Dale (R)
Rep. Ronald Devlin (R)
Rep. John Esp (R)
Rep. Gary Forrester (D)
Rep. Daniel Fuchs (R)
Rep. Verdell Jackson (R)
Rep. Jesse Laslovich (D)
Rep. Trudi Schmidt (D)
Rep. Butch Waddill (R)
Rep. Karl Waitschies (R)
Rep. David Wanzenried (D)

Members Excused: Rep. Bob Story, Chairman (R)

Members Absent: None.

Staff Present: Jeff Martin, Legislative Branch
Rhonda Van Meter, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 328, 1/22/2001; HB 377,
1/23/2001

Executive Action: None.

HEARING ON HB 328 & HB 377

Sponsor: REPRESENTATIVE ROGER SOMERVILLE, HD 78, Kalispell

Proponents: Jim Ahrens, Montana Hospital Association
Kurt Alme, Department of Revenue
Sidney Armstrong, Montana Community Foundation
Geoff Birnbaum, Missoula Youth Homes
Rita Blouke, United Way
Charles Brooks, Billings Area Chamber of Commerce
Cathy Campbell
Linda Carlston, Nature Conservancy
Marilyn Daumiller, Montana Community Foundation
Barbara Dayer, Intermountain Children's Home
John Delano
John DeWeese, Archie Bray Foundation
Rob Dickey, Intermountain Children's Home
Barbara Dreyer, Intermountain Children's Hospital
Marsha Eidel, Archie Bray Foundation
Eliza Frazer
Tim Furey, Loyola Sacred Heart H.S. Foundation
Christine Giffey-Brohaugh, Salvation Army
Mary Ann Gorsich, Montana Community Foundation
Gregg Groepper, Energy Share
George Harper, Montana League of Women Voters
Judy Held, Foundation for Community Care
Peter Held, Holter Museum of Art
Chase Hibbard
Sharon Hoff-Brodowy, Montana Catholic Conference
Julie Ippolito, HRDC Directors Association
Mona Jamison, Shodair Children's Hospital
Amy Kelley, Governor's Task Force on Endowed
Philanthropy
Sandra Kennedy, Carroll College
Joe Kiely
Gerald Koieg, Yellowstone Museum
Martin Lewis, Wells Fargo
William Long, Montana Land Reliance
Michael Magone, Target Range School
Amber Maloney, Montana Community Foundation
Joe Mazurek, D.A. Davidson and Montana Special
Olympics
Jami McCall, numerous organizations
Tim McCauley, United Way of Lewis & Clark County
Jon Metropoulos, MTSCPA
Mike Munck, St. Peter's Hospital Foundation
Aidan Myhre, Montana Chamber of Commerce

Jim O'Day, University of Montana Foundation
Sharon Peters, University of Montana Foundation
Bill Pruitt, Montana Community Foundation
Clark Pyfer
Alberta Rivera, Montana State Univ. Foundation
Jay Russell, Montana Historical Society Foundation
Michael Schechtman, Big Sky Institute
Deb Schlesinger, Library Foundation
Carl Schweitzer, Bozeman & Kalispell Chambers of
Commerce
Karen Sitte, University of Montana Foundation
Corby Skinner, Greater Yellowstone MCF
James Smrcka, CHMS, P.C.
James Soft, Yellowstone Boys & Girls Ranch
Foundation
Dustin Stewart, Associated Students of MSU
Vernon Sylvester
Katherine Syreciter
Estelle Tafoya, Beartooth Front Forum
John Talbot, International Choral Festival
Susan Talbot, Task Force on Endowed Philanthropy
Mark Taylor, AMHP
Tenis Tennyson, CMC Foundation
Jeffrey Tiberi, Montana Heritage Commission
Ruth Towe, Moss Mansion Museum
Mitch Tuttle, Montana Hope Project
Cindy Utterback, Anderson Zurmuehlen & Company
Bob Vogel, Montana Small Business Administration
Jeanne Wolverton
Ralph Yaeger, Montana Community Foundation
Steve Yeakel, Montana HRDC Directors Association

Opponents: None.

Opening Statement by Sponsor:

REP. SOMERVILLE submitted a letter into record from a proponent and read his written opening. **EXHIBIT**(tah21a01), **EXHIBIT**(tah21a02)

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 19.6}

Susan Talbot, Chair, Governor's Task Force on Endowed Philanthropy, said in 1994 Governor Racicot convened a group of national and state leaders in philanthropy to see how we could

encourage giving to endowed philanthropy in Montana. At this time, most Montanans did not understand endowments or how they could help. They proposed a tax credit bill for the 1995 legislature, which was similar to one in Michigan. This bill made many charities afraid their operating funds coming in would diminish as a result of gifts to the endowment, they expressed their concern, and this legislature did not pass the bill. Another bill was proposed in 1997 that passed, which was a tax credit for planned gifts by individuals and outright gifts by businesses only. This legislation has exceeded way beyond their fondest dreams. State government cannot meet all the needs of the citizens, and the non-profit sector helps to make up this difference. A permanent endowment gives long-term stability to a charity, and the tax credit encourages citizens to contribute to those permanent endowments.

James Soft, Executive Vice President, Yellowstone Boys & Girls Ranch Foundation, said America and Montana is unique by having tax policy to encourage philanthropy. Charitable activity is 12% of gross domestic product in this country. Montana's tax credit is especially unique, and he has received many calls from other states wondering how this was done. There is considerably greater revenue losses from this than what was originally projected in 1997. One of the reasons the revenue loss is significant is because the program is working. People now know what endowment is. He gave an example of a situation where an endowment was received. He asked the large trust companies in Montana how many charitable trusts there are, and they said that prior to 1997 there were 28 on their books. Two and a half years later, they had 69. The average trust is \$623,000. He gave two examples of someone who developed a charitable trust. If this bill can be made permanent or at least sustain it, the impact will be greatly enhanced and lessen the burden of government.

Sidney Armstrong, Executive Director, Montana Community Foundation, read her read her written testimony and provided additional information on the Montana Community Foundation.
EXHIBIT (tah21a03)

Judy Held, Director, Foundation for Community Care in Sidney, read her written testimony. **EXHIBIT (tah21a04)**

Jami McCall said she is representing a large number of groups. She is a lobbyist for Deaconess Billings Clinic Health Care Organization. She gave examples of tax credit gifts received at Deaconess. She also is the lobbyist for the Yellowstone Coalition, which includes many organizations in the Billings and Yellowstone County area. She is also representing several children provider groups and listed them for the record.

Captain Christine Giffey-Brohaugh, Salvation Army, read her written testimony. **EXHIBIT (tah21a13)**

George Harper, Montana League of Women Voters, said it is rare to have a law that affects everybody in a beneficial and satisfactory way. They urge the committee and legislature to keep it on the books.

Mike Schechtman, Board President, Big Sky Institute for the Advancement of Nonprofits, read his written testimony. **EXHIBIT (tah21a05)**

Kurt Alme, Director, Department of Revenue, said he agrees with all of the testimony so far. The problem is that this has been too much of a success, and we need to figure out how to effectively work to minimize the tax effect while maximizing the gifts. They want to work with everyone to try to figure out a way to fit this in the budget and try to preserve as much of this credit they can, because it is doing so much good for Montana communities. There are some offsetting benefits, but the problem is how they quantify them and relieve the burdens of government. The Department of Revenue supports this legislation to the extent it can be worked into the budget.

Chase Hibbard gave a brief history of the passing of the endowment bill. There are a lot of things now possible because of this tax credit, but unfortunately these good works come with a price tag. He supports this concept and bill and hopes the resources can be found to meet this successful program and the growing need of Montana. He has received more input on this issue than any other for Montana.

Jim Ahrens, President, Montana Hospital Association, said many of the small hospitals lose money on an average in operations, and investments, foundations, and endowments help make this up. Regarding the fiscal note, it would be interesting to add up all the things these foundations contribute to society and all the jobs and services the hospitals provide and send the bills to the state. The \$9 million on the fiscal note might be a bargain.

Mona Jamison, Shodair Children's Hospital of Helena, said the mission of Shodair has been to provide quality healthcare programs for Montana families and children. Public financial support has always been needed to assist with the funding of its operational budget. Endowment funds will continue to make this key source of revenue available in the future. By strengthening Montana endowments, charities are better equipped to help resolve social, educational, and healthcare programs. It keeps financial capital gains tax dollars in Montana, keeps future Federal estate

tax dollars in Montana, saves Montanans Federal income tax dollars, and induces Montanans to be more philanthropic to Montana charities.

Joe Mazurek, D.A. Davidson, said the trust company run by D.A. Davidson prior to 1997 had 10 charitable trusts and now has 45-50. Twenty of those were created in the last month of 2000 due to uncertainty as to whether this credit will continue. The average size of these trusts which exist for 10-20 years is approximately \$400,000. There is about a 7% return being generated over this 10-20 years, which is about \$28,000 per year in taxable income. So there is actually money being paid out by the trust that is being taxable. The maximum credit that can be taken is \$10,000. This is another consideration to take into account when looking at the impact. It is not simply a matter of the tax credit but also a matter of generating income on which income taxes will be paid. This bill encourages giving to charities in Montana keeping the money here and giving a tax benefit to the contributor. Otherwise the money will not stay in the state and go to Federal taxes in many instances.

William Long, Montana Land Reliance, read his written testimony.
EXHIBIT (tah21a06)

Joe Keiley said the endowment tax credit is a type of tax that provides long-range economic development. It enables organizations to provide essential services that benefit an extraordinarily large sector of the population of Montana. The continuation of this program is a responsible action of this legislature.

Mike Munck, Executive Vice President, St. Peter's Hospital Foundation, said he is providing information and figures that show an increase in taxable income from planned gifts.
EXHIBIT (tah21a07) Montana's hospitals provide critical services and do this regardless of insurance or personal finance of the people who come to them. He knows of no other business in Montana or the country where you can go with no money and receive costly services. It is income from endowments that help make these services possible to everyone. He gave examples of specific services and how endowments allow these to continue.

Bob Vogel, Director of Governmental Relations, Montana School Boards Association, said all of the school districts and trustees represented support this bill. They believe some things are more important than any fiscal note that could come with a concept.

Sharon Peters, Vice President for Major Fund Development, University of Montana Foundation, said the university has

benefitted greatly from the tax credit. Many gifts made to the university have been directed toward scholarships, and these are very important to students. She gave an example of a specific person and how he set up an endowment for the university for scholarships.

Aidan Myhre, Montana Chamber of Commerce, said the chamber's mission is to promote, advance, improve, and participate in research and education projects for the purpose of encouraging economic development of Montana and its communities. If we want to bring good jobs to Montana and keep our young people here, then we have to start with education. When in business, the concepts of cost and value and cost and benefit are very important for success. Montana is just like a business. The benefits of this tax credit far outweigh the costs. It is an investment in our future.

Mitch Tuttle, Montana Hope Project, explained Montana Hope Project and said planned giving is used to fund the wishes. **EXHIBIT(tah21a08)**, **EXHIBIT(tah21a09)**

Jeffrey Tiberi, Executive Director, Montana Heritage Commission, read his written testimony. **EXHIBIT(tah21a10)**

Jay Russell, Development Director, Montana Historical Society Foundation, read his written testimony. **EXHIBIT(tah21a11)**

Alberta Rivera, Montana State University Foundation, said that even though the tax credit has contributed modestly to the overall growth in their endowment, it has contributed in very important ways. Most of the gifts through the Montana tax credit have gone to support students in scholarships and fellowships.

Tim Furey, Loyola Sacred Heart High School Foundation, read his written testimony. **EXHIBIT(tah21a12)**

Dustin Stewart, Associated Students of Montana State University, said this is very important to students for the money it provides directly to scholarships. Over 53% of the money that came into the foundation went directly to student scholarships. In 1997, they received 13 gifts for \$39,000, and it has increased to 55 gifts for \$435,000.

Marsha Eidel, Archie Bray Foundation, said the endowment for the foundation has grown more in the last four years than in the entire 46 years previously. They believe that growth is due in part to the incentives generated by the tax credit but also to the knowledge of the benefit of endowment for organizations.

Gregg Groepper, Executive Director, Energy Share of Montana, said they support eliminating the sunset, but as a second choice, at least doing a six-year extension. They started an endowment in 1997, and this will hopefully replace state funding that will no longer be received to help low income people; however, they need an extension or elimination of the sunset to complete this goal. When trying to address the fiscal note, the committee needs to keep in mind the people who are donating are sophisticated and will try to avoid paying tax no matter what, so there will always be a cost associated with this. The cost on the fiscal note is already in the budget for this biennium.

Cindy Utterback, Anderson Zurmuehlen & Company, said their firm has actively promoted this credit and have seen the benefits to both individual taxpayers and Montana's nonprofits. We should look beyond the immediate cost of this credit and look to the future of the investment these people are making in Montana.

Sharon Hoff-Brodowy, Montana Catholic Conference, said the proponents are reflective of how well this law has worked. All of their institutions have benefitted from this charitable opportunity.

Vernon Sylvester said he has taken advantage of this tax credit. He could not have given his gift if it were not for this endowment opportunity.

Katherine Sylvester said Montana's little places have benefitted from this to extend the life of the communities and preserve their heritage. This tax credit should be kept for the little nonprofits in Montana communities.

Clark Pyfer said the CPA Society has gone on record as supporting this bill, and he wants to second all of the testimony.

Written testimony was submitted from James Smrcka, CHMS.

EXHIBIT(tah21a14)

Opponents' Testimony: None.

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 17.2}

REP. FORRESTER asked for perspectives on how the committee should deal with the fiscal impact to the state. **Chase Hibbard** reviewed the 1997 fiscal note. He said the two obvious things are to either reduce the 50% credit or reduce the \$10,000 maximum. If the percentage is decreased, the people taking advantage of this

now may give more so they still get the \$10,000 credit. By reducing the maximum of \$10,000, it may broaden the support to people who do not have as much to contribute.

REP. BALYEAT said he has heard a criticism of this credit that it tends to favor large charities over small charities because of the complexities of doing a planned gift and asked if there are organizations that provide help for small charities to take advantage of the tax credit. **Michael Schechtman** said the Montana Community Foundation has a program that is directed toward charities establishing endowments under their umbrella and provide a variety of options for planned gifts. The nonprofits in Lewis & Clark county did a survey regarding endowments, and the responses indicated more education and resources, so they provided a seminar series. A number of small nonprofits started endowments due to this. It has been slower for small organizations, but it is starting to happen and they are seeing good progress. **REP. BALYEAT** said another criticism he has heard is this credit is an off-budget appropriation and the universities fail to mention this assistance. He asked if there is a possibility of getting cooperation from the universities to include the monies received from the endowments when reporting their funding levels to the public. **Sharon Peters** said they provide an annual report to the university every year and believes this information is included in that. How that is incorporated into the university's report she does not know. **REP. BALYEAT** asked if the implications of gifts to religious entities with respect to the Montana constitution have been addressed. **REP. SOMERVILLE** said he does not believe this violates our constitution. **REP. BALYEAT** asked the sponsor whether we should eliminate the sunset or extend the sunset. **REP. SOMERVILLE** said he would prefer to eliminate the sunset and believes this will be better for the state.

REP. ESP asked if the Department of Revenue has analyzed how the elimination of the inheritance tax might affect this tax credit. **Kurt Alme** said he does not know if the Department has done any thinking along those lines. His analysis is that the inheritance tax repeal will not have a significant impact, because the Federal estate tax is still there. One of the driving factors for charitable giving in his experience was the Federal estate tax and not the state inheritance tax. If the Federal estate tax is repealed, there probably would be a significant impact on charitable giving as a whole, which might make the importance of this credit even more visible.

REP. BALES asked if the tax revenue from earned income on the trusts was figured into the fiscal note. **Kurt Alme** said no. They would like to take this into account, but it is very

complicated to predict and calculate. Unfortunately at this point they have not been able to quantify the secondary effects heard about. **REP. BALES** asked if there is any kind of estimate at all. **Kurt Alme** said at this point there is not.

REP. ANDERSEN asked what the relationship is between the Montana Land Reliance and the Montana tax credit. **William Long** said they are a nonprofit organization, and as such people can make charitable gifts to them. As part of their program, they have endowment funds established, and the tax credit has allowed them to increase these funds to run the program. **REP. ANDERSEN** asked what the funds are used for. **William Long** said they are a private land conservation group. They work with private landowners throughout Montana to assist them in protecting their land from being developed and to maintain a historical use, which is primarily range land and timber lands.

REP. WAITSCHIES asked if foundations have analyzed how the different tax credits affect taxable income. **Jim Soft** said a careful analysis of the tax credit bill shows about 45% of this is attributable to the outright gifts by the pass-through entities and C-corporations. The Life Income Gift Credits might be the most important credits because it really jump starts the smaller charities. These are the types of gifts that will generate ongoing taxable revenues. For the small charities, there are the trust companies of Montana to help assist with the complex aspects. The present value of the taxable revenues over 20 years is probably going to generate about \$2 million in taxes, so the state has made money on these.

REP. SCHMIDT asked what the three communities are that have community foundations. **Sidney Armstrong** said they began with one affiliated community foundation, and then through the initiative she spoke of, Daniels County, Powder River County, and the Blackfeet Reservation joined in on that initiative. Through a lot of other opportunities, over 50 local community foundations are affiliated with them. It is simply for the local area, residents can contribute, the endowment is managed by the community foundation, and they work with those citizens as they identify issues of need. They are the umbrella for the nonprofits and local communities to build their own permanent resource to fund any kind of effort.

REP. ERICKSON asked if someone gave a charitable remainder trust to the university, how much would they get out of that immediately. **Sharon Peters** said nothing. **REP. ERICKSON** asked if it is reasonable to say a citizen is getting a tax benefit but the benefit to the university may be quite far into the future. **Sharon Peters** said this is true depending on the term of the

trust. **REP. ERICKSON** asked what percentage of the gifts go toward general operation of the university. **Sharon Peters** said a very small portion. Almost all of the money the foundation receives is designated for a specific purpose by the donor. Each year there is about \$230,000 that comes in unrestricted, mostly from the Missoula business drive, which is given to the president. He uses this money for projects and faculty presentations. The majority of gifts is for scholarships, but some is for faculty development, program startup money, or building of a facility. **REP. ERICKSON** asked how often people ask about giving to charities because they are worried about estate problems. **Kurt Alme** said he had just an estate planning practice so his experience is a bit skewed. Most of the clients who came to him regarding this credit idea, it generated out of an estate planning context. The credit with the current income tax advantage and Federal estate tax advantage was looked at. His experience from speaking to people outside of his own practice, especially the CPA's, was that the credit had a more significant impact on endowed giving than estate tax concerns.

Closing by Sponsor:

{Tape : 3; Side : A; Approx. Time Counter : 25}

REP. SOMERVILLE said he is pleased that the bill was rewritten for 1997 to make it effective. This has been a very good bill and process for Montana. With the charitable endowment credit, we have established some good foundations which provide long-term stability for future operations of many charities. We have a lot of retired people moving to Montana, and they usually bring money with them. Some have said this charitable endowment credit, even with the high income tax, has probably helped them justify staying in Montana. The credit allows the taxpayer to choose where they want to contribute and how their tax dollars will be spent. It allows people to get credit for doing something for their community. This is good tax policy that is good for the citizens of Montana.

ADJOURNMENT

Adjournment: 10:30 A.M.

REP. BOB STORY, Chairman

RHONDA VAN METER, Secretary

BS/RV

EXHIBIT (tah21aad)